

LEGISLATIVE BILL 496

Approved by the Governor May 5, 1999

Introduced by Kristensen, 37

AN ACT relating to telecommunications; to amend sections 86-301 to 86-304, Reissue Revised Statutes of Nebraska; to change provisions relating to right-of-way for telecommunications lines and related facilities; to provide eminent domain powers; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 86-301, Reissue Revised Statutes of Nebraska, is amended to read:

86-301. (1) Any ~~telegraph or telephone~~ telecommunications company, incorporated or qualified to do business in this state, is granted the right to construct, operate, and maintain ~~telegraph and telephone~~ telecommunications lines and related facilities along, upon, across, and under the public ~~roads~~ highways of this state, and upon and under lands in this state, whether state or privately owned, ~~except~~ PROVIDED, that (a) such lines and related facilities shall be so constructed and maintained as not to interfere with the ordinary use of such lands or of such ~~roads~~ highways by the public, and ~~that~~ (b) all aerial wires and cables shall be placed at a height of not less than eighteen feet above all ~~road~~ highway crossings. Nothing in sections 86-301 to 86-304 shall transfer the rights now vested in ~~cities, incorporated towns and villages~~ municipalities in relation to the regulation of the poles, wires, cables, and other appliances.

(2) Sections 86-301 to 86-304 shall not authorize a telecommunications company to erect any poles or construct any conduit, cable, or other facilities along, upon, across, or under a public highway within a municipality without first obtaining the consent of the governing body of the municipality. The municipality shall not exercise any authority over any rights the telecommunications company may have to deliver telecommunications services as authorized by the Public Service Commission or the Federal Communications Commission.

(3) Consent from a governing body for the use of a public highway within a municipality shall be based upon a lawful exercise of its statutory and constitutional authority and shall not be unreasonably withheld, nor shall any preference or disadvantage be created through the granting or withholding of such consent. A municipality shall not adopt an ordinance that prohibits or has the effect of prohibiting the ability of a telecommunications company to provide telecommunications service.

(4) A municipality shall not levy a tax, fee, or charge for any right or privilege of engaging in a telecommunications business or for the use by a telecommunications company of a public highway other than:

(a) An occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525; and

(b) A public highway construction permit fee or charge to the extent that the fee or charge applies to all persons seeking use of the public highway in a substantially similar manner. All public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits. Any highway construction permit fee or charge shall also be reasonably related in time to the occurrence of such costs.

Any tax, fee, or charge imposed by a municipality shall be competitively neutral.

(5) The changes made by this legislative bill shall not be construed to affect the terms or conditions of any franchise, license, or permit issued by a municipality prior to the effective date of this act or to release any party from any obligations thereunder. Such franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. A municipality may lawfully enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement.

(6) Taxes or fees shall not be collected by a municipality through the provision of in-kind services by a telecommunications company, and a municipality shall not require the provision of in-kind services as a condition of consent to the use of a public highway.

(7) The terms of any agreement between a municipality and a telecommunications company regarding use of public highways shall be matters

of public record and shall be made available to any member of the public upon request, except that information submitted to a municipality by a telecommunications company which such telecommunications company determines to be proprietary shall be deemed to be a trade secret pursuant to subdivision (3) of section 84-712.05 and shall be accorded full protection from disclosure to third parties in a manner consistent with state law.

(8) For purposes of sections 86-301 to 86-304:

(a) Highway shall have the same meaning as in section 60-624; and

(b) Telecommunications company shall have the same meaning as in section 86-802.

Sec. 2. Section 86-302, Reissue Revised Statutes of Nebraska, is amended to read:

86-302. Every ~~such~~ telecommunications company is authorized to enter upon private lands to survey the ~~same, and every~~ lands for the purpose of obtaining a right-of-way. Every owner of an interest in private lands to be occupied by any ~~such~~ telecommunications lines shall be compensated for any right-of-way thus appropriated. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 3. Section 86-303, Reissue Revised Statutes of Nebraska, is amended to read:

86-303. Any right-of-way obtained under sections 86-301 to 86-304 by condemnation proceedings for poles, aerial wires, and aerial cables, shall be located only on section boundary lines as established by law or property boundary lines adjoining public highways as established by law. All expense of surveying, court costs, and reasonable ~~attorneys'~~ attorney's fees shall be paid by the telecommunications company obtaining the right-of-way. ~~Should any telegraph or telephone~~ If any telecommunications line constructed under sections 86-301 to 86-303 ~~be~~ is abandoned for three years, the right-of-way or easement shall revert to the property affected.

Sec. 4. Section 86-303.01, Reissue Revised Statutes of Nebraska, is amended to read:

86-303.01. If the public ~~road~~ highway, along, upon, across, or under which the right to construct, operate, and maintain the ~~telephone or telegraph~~ telecommunications lines and related facilities is granted, is a state or federal highway, then the location and installation of such lines and related facilities, insofar as they pertain to the present and future use of the right-of-way for highway purposes, shall be subject to such reasonable regulations and restrictions as are or may be prescribed by the Department of Roads. If the future use of ~~said~~ the state or federal highway requires the moving or relocating of ~~said~~ the facilities, then such facilities shall be removed or relocated by the owner, at the owner's cost and expense, and as directed by the Department of Roads except as provided by ~~the provisions of~~ section 39-1304.02.

Sec. 5. Section 86-304, Reissue Revised Statutes of Nebraska, is amended to read:

86-304. Any person ~~or persons~~ who ~~shall~~ willfully and maliciously ~~break, injure, destroy or otherwise interfere~~ breaks, injures, destroys, or otherwise interferes with the poles, wires, or ~~fixtures~~ other facilities of any ~~telegraph, telephone~~ telecommunications or railroad company or electric light and power company in this state, or who ~~shall~~ willfully and purposely ~~interrupt or interfere~~ interrupts or interferes with the transmission of ~~telegraph or telephone~~ telecommunications messages or the transmission of light, heat, and power in this state, shall be subject to the action and penalty prescribed in section 28-519.

Sec. 6. Original sections 86-301 to 86-304, Reissue Revised Statutes of Nebraska, are repealed.